IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 393 OF 2004

JOSE FRANCIS REMO CAMILO AND ANR., ...Petitioners

Versus

MARIA SARAFINA DA'CRUZ, ...Respondents
MERCES-GOA.

Mr. S. S. Kantak with Ms. L. Dharwadkar, advocate for the petitioners.
Mr. Menino Pereira, advocate for the respondent.

Coram:- R. M. LODHA, J.

Date:- 25th August, 2005

P.C.

Heard Mr. S. S. Kantak, the learned counsel for the petitioners. I perused the order of the Appeal Court as well as of the trial Court. The trial Court held that the plaintiff has been able to establish, prima facie, his title over the property. The trial Court passed the following temporary injunction against the petitioners:-

"The defendants, their heirs, assigns, legal representatives are hereby restrained by way of temporary injunction from carrying out any constructions or interfering in any manner whatsoever in the suit property bearing survey no.68/1 situated in the fish market at Thana, Cortalim, Mormugao Taluka except from proceeding to and from to their house located in the suit property till the disposal of the suit."

The present petitioners aggrieved by the Order of the trial Court carried the matter in appeal. The Appeal Court concurred with the prima facie consideration of the matter by the trial Court and held that the suit property belonged to the plaintiff's grand-father and, consequently, is owned by the plaintiff upon the death of her ancestors. The Appeal Court also concluded that the possession of the defendants over the suit property was unlawful.

In this backdrop the Appeal Court maintained the order of temporary injunction granted by the trial Court.

The Appeal Court further observed thus:-

"The court would not hesitate to grant injunction in respect of structures which are illegal, because not only the interest of third parties are involved but also because more trespassers would be inducted into the property if injunction is not granted and that will lead to multiplicity of proceedings. Thus the illegality of the suit structures cannot be totally ignored and the learned trial Judge has rightly taken into consideration the said fact also. The learned trial Judge has therefore rightly come to the conclusion that the plaintiff has prima facie proved her case and that irreparable loss and injury would be caused to the plaintiff if injunction is not granted and that the balance of convenience tilts in her favour."

The approach and consideration of the matter by the Appeal Court in not interfering with the discretionary order of the trial Court cannot be said to suffer from any error of jurisdiction or material irregularity or illegality in exercise of jurisdiction. No case for invocation of extraordinary jurisdiction is made.

The Writ Petition is dismissed in limine.

R. M. LODHA, J.